

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

RICHARD GARCIA, III,

v.

DIRECTOR, TDCJ-CID,
NATHANIEL QUARTERMAN

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C.A. NO. C-06-187

**ORDER DENYING PETITIONER'S
MOTION FOR AN EVIDENTIARY HEARING**

Petitioner is a state inmate currently incarcerated at the Coffield Unit in Tennessee Colony, Texas who has filed a habeas petition pursuant to 28 U.S.C. § 2254. (D.E. 1). Pending is petitioner's motion for an evidentiary hearing. (D.E. 15).


Rule 8(a) of the Rules Governing Section 2254 Cases states that "[i]f the petition is not dismissed, the judge must review the answer, any transcripts and records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted." Rule 8(c) further requires that "[t]he judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare." The Fifth Circuit has explained that "[a] hearing in a habeas proceeding is required only when, *inter alia*, the record reveals a genuine factual dispute." Tague v. Puckett, 874 F.2d 1013, 1015 (5th Cir. 1989) (emphasis added); see also Murphy v. Johnson, 205 F.3d 809, 815 (5th Cir. 2000) (discussing basis for evidentiary hearing).

Petitioner is challenging his conviction on June 29, 2000 in the 347th Judicial District Court in Nueces County for burglary of a habitation. (D.E. 1, at 2). In the pending motion, he argues for discovery and an evidentiary hearing related to the prison facility's legal mail records. (D.E. 15, at 3). In his answer, respondent asserts that petitioner's claim is time-barred, (D.E. 13,

at 1), but has not filed a dispositive motion yet. Any dispositive motion must be filed no later than January 11, 2007. (D.E. 14). Respondent may concede that an evidentiary hearing is necessary, but at this stage, an evidentiary hearing is premature.

Accordingly, petitioner's motion for an evidentiary hearing, (D.E. 15), is hereby DENIED without prejudice.

ORDERED this 24th day of October 2006.


BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE